

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DEBORAH LAUFER,

Plaintiff,

**MEMORANDUM
AND ORDER**

-against-

20-CV-3541 (ARR)

GIY OWNER LLC,

Defendant.

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ROANNE L. MANN, UNITED STATES MAGISTRATE JUDGE:

By Order to Show Cause dated February 16, 2021, this Court directed plaintiff Deborah Laufer ("Laufer" or "plaintiff") to show cause why her motion for default judgment should not be denied without prejudice, and the case stayed, pending the Second Circuit's decision in Harty v. West Point Realty, Inc., No. 20-2672 (2d Cir. Aug. 11, 2020), a case in which the plaintiff therein – who, like Laufer, is represented by attorney Peter E. Sverd, appealed the dismissal of his complaint, which contained similar allegations to the pleading at issue here. See Order to Show Cause (Feb. 16, 2021) ("2/16/21 Order to Show Cause") at 2-3, DE #18. Since plaintiff Laufer failed to respond by the judicially-imposed February 24th deadline, this Court denies without prejudice plaintiff's motion for default judgment, and stays this action, pending the outcome of the appeal in West Point Realty.¹ See Freedom Mortg. Corp. v. Bullock, 19-CV-664 (NGG) (SJB), 2020 WL 6047425, at *4 (E.D.N.Y. Oct. 13, 2020) (denying default judgment motion without prejudice to renew, and staying the filing of

¹ The denial of a motion for default judgment is nondispositive and therefore within a magistrate judge's authority. See Franklin v. Parnell, 461 F.App'x 823, 825 n.2 (11th Cir. 2011) ("The magistrate judge had authority to deny [plaintiff's] motion for default judgment.").

any new dispositive motions in the matter, pending the resolution of question certified to the New York Court of Appeals); Miss Jones, LLC v. Viera, 18-CV-1398(NGG) (SJB), 2020 WL 1527141, at *3 (E.D.N.Y. Mar. 31, 2020) (same). Plaintiff's counsel is directed to advise this Court within 14 days of the issuance of a decision on the appeal in West Point Realty.

In addition, plaintiff failed to file proof of service of the 2/16/21 Order to Show Cause on defendant, despite the Court's directive. See 2/16/21 Order to Show Cause. Following plaintiff's failure to prosecute the case after the expiration of defendant's time to answer or otherwise respond to the complaint, this Court in an Order to Show Cause dated January 5, 2021, warned plaintiff of the consequences of his continued inaction. See Order to Show Cause (Jan. 5, 2021), DE #9. Accordingly, plaintiff is directed to cure the aforesaid omission (and to serve this Order) by March 12, 2021, upon pain of sanctions, including a recommendation that the case be dismissed with prejudice for lack of prosecution.

SO ORDERED.

Dated: Brooklyn, New York
March 10, 2021

/s/ *Roanne L. Mann*
ROANNE L. MANN
UNITED STATES MAGISTRATE JUDGE